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In the Supreme Court of the United States

OCTOBER TERM, 1959

WILLIAM A. ALBAUGH, PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

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No. 134

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WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES

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OPINIONS BELOW

The *per curiam* order of the Court of Appeals for the District of Columbia Circuit, dated May 11, 1959, affirming the judgment of the District Court (Pet. App. 7a), has not been reported. The judgment of the District Court for the District of Columbia has not been reported (R. 8[1]).

JURISDICTION

The order of the Court of Appeals was entered on May 11, 1959 (see Pet. App. 7a). The petition for a writ of certiorari was filed on June 22, 1959.

[1] The designation "R.", as used in the petition and this brief, refers to the Appellant's Appendix in the Court of Appeals.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner, a "citizen claiming no special injury," may challenge the legality of charitable fund-raising campaigns among federal employees.

STATEMENT

On November 7, 1958, petitioner filed a complaint in the District Court for the District of Columbia seeking declaratory relief invalidating Executive Order No. 10728, Establishing the President's Committee on Fund-Raising Within the Federal Service (R. 3–6), and an order enjoining the respondent from conducting fund-raising campaigns for charity among federal employees in accordance with the Executive Order (R. 1, 2). On February 6, 1959, the District Court entered judgment for the respondent on the ground that the petitioner lacked standing to sue (R. 8). The petitioner appealed (R. 8), and on May 11, 1959, the Court of Appeals for the District of Columbia Circuit granted the respondent's motion to affirm (Pet. App. 7a).

ARGUMENT

This action is based on the theory that the diversion of civil servants from other duties to fund raising for private charities is an unauthorized use of public funds (R. 2). The fact is that the Executive Order sought to be challenged was designed to promote the efficiency of the government service by regulating solicitations for charitable causes among

federal employees, a privilege traditionally permitted (R. 3–6).[2] It is clearly within the President's executive power. U.S. Const., Art. II, Sec. 1, cl. 1. For present purposes, however, it is enough to point out that petitioner is, by his own description (Pet. 4), a "citizen claiming no special injury"; it is therefore clear that he has no standing, and that his action does not present a justiciable controversy. *Massachusetts* v. *Mellon*, 262 U.S. 447; *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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[2] The Order creates the President's Committee on Fund-Raising Within the Federal Service. 23 Fed. Reg. 7219 (1957) (R. 3–6). As the preamble recites, a main purpose of the Order is to provide uniform standards governing charitable solicitations in the interest of their being conducted "in such manner as will occasion minimum interruption of Government functions" (R. 3). To achieve this end, a "uniform fund-raising program" is required, and the number of solicitations must be restricted (R. 3). Solicitations are to be conducted in such manner that "Persons on duty shall be subjected to a minimum of disturbance" (R. 4). Record-keeping and administration are to be "held to a minimum", and the order provides that no additional compensation be paid officers and employees of the Government for services under the Order (R. 4, 6).

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